

BEFORE THE DIRECTOR
OF THE
OFFICE OF CAMPAIGN FINANCE
D.C. BOARD OF ELECTIONS AND ETHICS
2000 14TH STREET, N.W., SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Joseph Bowser
Advisory Neighborhood Commissioner
(Commissioner)
Advisory Neighborhood Commission
(ANC) 5A03
4809 7th Street, N.E.
Washington, D.C. 20017

DATE: July 15, 2004

BOEE NO. 04-002(a)

RE: INVESTIGATION NO. 03-01

ORDER

Statement of the Case

On April 8, 2004, the Office of Campaign Finance (OCF) issued to Commissioner Joseph Bowser an order to appear before the Director and to show cause why a civil penalty should not be levied against him for an apparent violation of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974, as amended, D.C. Official Code §§1-1101.01 et seq. (Act).¹

Specifically, it appeared that Commissioner Bowser accepted a round trip coach fare airline ticket to Orlando, Florida from Bannum, Inc. to visit a Bannum facility in June 2002, in violation of D.C. Official Code §1-1106.01(b) and (c) (2001 Edition) and 3 D.C.M.R. §3711.2(u) (1999, as amended), while Bannum “. . . was still trying to garner support from the Ward 5 community and its leaders, including ANC commissioners, for construction of [a community corrections] center [halfway house].” See In Re: Rhonda Chappelle v. Office of Campaign Finance (Board Order), Administrative Hearing No. 04-002 (February 19, 2004) at Background, p. 1; and, In the Matter of: Rhonda Chappelle (OCF Order), Investigation 03-01 (November 5, 2003) at Findings of Fact 12, p. 6, both incorporated by reference in their entirety in the instant Order.

It also appeared that Commissioner Bowser may have violated D.C. Official Code §1-1106.02 and 3 D.C.M.R. §3711.2(x) if he failed to disclose his acceptance, from Bannum, Inc. of the airline ticket to Orlando, Florida, to the members of ANC 5A, if he took official action with regard to the Bannum facility. See OCF Order at Exhibit C, p. 3.

¹ Bannum, Inc., through David Lowry, its Executive Director, was also ordered to appear on April 26, 2004, for same, at 11:30 a.m. An order in the matter issues today.

Issues

1. Whether Commissioner Joseph Bowser violated D.C. Official Code §1-1106.01(b) and (c) (2001 Edition) and 3 D.C.M.R. §3711.2(u) (1999, as amended), when he accepted a round trip coach fare airline ticket to Orlando, Florida from Bannum, Inc. to visit a Bannum facility in June 2002 because Bannum was attempting to garner his support, as an Advisory Neighborhood Commissioner, for construction of a halfway house in Ward 5?
2. Whether Commissioner Bowser took official action, pursuant to D.C. Official Code §1-309(10)(a), with regard to the placement of the Bannum facility in Ward 5?
3. If Commissioner Bowser took official action, pursuant to D.C. Official Code §1-309(10)(a), with regard to the placement of the Bannum facility in Ward 5, whether Commissioner Bowser informed the Board of Elections and Ethics and ANC 5A of his June 2002 visit to Orlando, Florida at the expense of Bannum, in accordance with D.C. Official Code §1-1106.01(g)?

Background

As a result of a complaint filed by Advisory Neighborhood Commissioner (5B03) Regina James, OCF undertook an investigation into whether Advisory Neighborhood Commissioner Rhonda Chappelle may have received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect a Bannum, Inc. community center in June 2002 and failed to disclose on the record at the February and March 2003 public ANC meetings of her “personal interest with Bannum,” *i.e.*, the receipt of the plane ticket, when she took official action; and, whether it was reasonably inferred that the “thing of value,” *i.e.*, the plane ticket, may have influenced her in the discharge of her duties because she accepted it.

After its investigation, OCF found that Commissioner Chappelle indeed violated the Act and fined her therefor. Commissioner Chappelle appealed the OCF Order to the Board of Elections and Ethics, and the Board upheld the OCF Order.

However, during the course of the investigation, OCF discovered that Bannum, Inc., the donor of the roundtrip coach fare plane ticket to Orlando, Florida, accepted by Commissioner Chappelle, paid for a roundtrip coach fare plane ticket to Orlando, Florida for Commissioner Joseph Bowser, ANC 5A03, who accompanied Commissioner Chappelle. Accordingly, after the Board issued its Order in this matter, OCF issued an Order to Show Cause to Commissioner Bowser and requested his appearance at the OCF office on April 26, 2004 at 10:30 a.m.

The scope of the OCF investigation, which was conducted until June 24, 2004, encompassed reviewing and verifying all submitted information, in light of the Campaign Finance Act and ANC statutes; research; and in-house meetings.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-309.10(a) reads, in part, “Each [ANC] may advise the [Council], the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area.”

D.C. Official Code §1-309.10(c)(1) reads, in part, “Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the [Council], the executive branch, or independent agencies, boards, and commissions. [E]ach agency, board and commission shall, before. . .the formulation of any final policy decision or guideline with respect to. . .requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area. . .provide. . .notice of the proposed action[.]”

D.C. Official Code §1-309.10(d)(3)(A) reads, “The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”

D.C. Official Code §1-1106.01(c) reads, “No person shall offer or give to a public official or a member of a public official’s household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution or promise of future employment, based on any understanding that such public official’s official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to §1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.”

D.C. Official Code §1-1106.01(g) reads, “Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family or client interest, shall:

“(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

“(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics [(Board)];

...

“(3) [I]f he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists[.]”

D.C. Official Code §1-1106.02(i)(2) states, “Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of §1-1106.01.”

Pursuant to 3 D.C.M.R. §3709.1, “The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30-37 of this title.”

Pursuant to 3 D.C.M.R. §3711.1, “Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]”

Pursuant to 3 D.C.M.R. §3711.2, “Fines shall be imposed as follows:

“(w) Accepting, soliciting or giving any thing of value to influence official government actions \$2000;

“(z) Failure to disclose potential conflicts of interest 2000[.]”

For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.

Summary of Evidence

To show cause why civil penalties should be imposed against him, in accordance with 3 D.C.M.R. § 3711.2, Commissioner Bowser relied upon his testimony during the hearing held at the OCF office on April 26, 2004, at 10:30 a.m. He appeared and was accompanied by Advisory Neighborhood Commission 5A Chairperson Norma Broadnax and Commissioner (5A08) Tim Thomas; and Mr. Levin Lee, a former constituent of Commissioner Bowser. William O. Sanford, Esq., OCF Senior Staff Attorney, was also present.

Commissioner Bowser immediately admitted to accepting the roundtrip plane ticket to Orlando, Florida to visit “a correctional facility.” He stated that Chairperson Broadnax requested him to go in her stead and that he was under the impression that the trip was sponsored by the D.C. Prisoners’ Legal Services Project, Inc.² He stated that he left at 11:30 a.m. on June 11, 2002, toured the facility, interviewed the regional director, gave a report to Mr. Crawford of the D.C. Prisoners’ Legal Services Project, Inc., “got back on

² “Crawford confirmed the Orlando, Florida visit and that he attended, at the expense of his employer, D.C. Prisoners’ Legal Services Project, Inc. He stated that he encouraged the visit so that the ANC representatives could view the Bannum halfway house facility in an urban setting. He further confirmed, consistent with the statements of Chappelle and Lowry, that he arranged and facilitated meetings in Ward 5 to create a working relationship between Bannum and the community.” See OCF Order at 5.

the plane” and arrived home by 7:00 p.m. He continued that he informed ANC 5A of the trip. Chairperson Broadnax clarified that the minutes are not transcribed verbatim and that they would simply indicate that he visited Orlando, Florida to tour the facility.

Chairperson Broadnax interjected that the proposed correctional facility in Ward 5 was not ANC 5A business, “It is not our issue.” Commissioner Thomas stated that they “didn’t really deal with Bannum because of 5B.”

Mr. SanFord queried the commissioners as to how they became aware of Bannum and the excursion to Orlando, Florida. Chairperson Broadnax replied that she was informed about Bannum and the project through Mr. Crawford. Then Mr. SanFord queried Commissioner Bowser as to who paid for the trip. Commissioner Bowser responded, “I have no idea; I got rid of all that; a courier brought the ticket to the house; I have no idea who bought it.” When Chairperson Broadnax was queried same, she replied that she did not inquire.

Commissioner Thomas said that Bannum, Inc. wanted the commissioners to view the facility before the community voted “no” on the correctional center project. He emphasized that the excursion was not a luxury trip and it was only 1 day. The commissioners were then advised that Bannum, Inc., in fact, paid for the ticket. Commissioner Bowser repeated that he did not know that Bannum, Inc. had paid for the ticket and implied that, if he had known so at the time, he would not have taken the trip. He was next queried that, now that he knew that Bannum, Inc. had purchased the ticket for his trip, would he return the cost thereof. Commissioner Bowser said, “Yes.”

The commissioners all stated that ANC 5A did not take any official action with Bannum, but they really weren’t quite sure. Copies of the minutes from their ANC meetings were requested for the period of April 2002 through May 2003. Available minutes were submitted and verified by June 3, 2004.³

OCF relied upon the Board and OCF Orders, cited herein.

Findings of Fact

Based upon the Show Cause Hearing of April 26, 2004, and all of the evidence submitted in this matter, I find:

1. Advisory Neighborhood Commissioner (5A04) Joseph Bowser has been elected to this position every 2 years since November 1984. See BOEE records.
2. Bannum, Inc. is a national operator of community corrections centers (center), or halfway houses; and, in November 2000, through its representatives, met with local officials and community leaders in pursuance of its effort to obtain zoning approval from the District of Columbia for the operation of a center at 2210 Adams Place, N.E. See OCF Order at Exhibit (Exh.) B at Nos. 3, & 5-6.

³ These minutes are part of the record and are available upon request. Any minute substantiating a finding herein is appended hereto.

3. On June 11, 2002, Commissioner Bowser accepted a roundtrip coach fare plane ticket to travel to Orlando, Florida to visit and inspect a community center operated by Bannum, Inc.
4. Bannum paid the airfare for Commissioner Bowser to visit and inspect its Orlando, Florida center, when it was still trying to garner support from the Ward 5 community and its leaders, including ANC commissioners, for construction of the proposed center. See OCF Order at Exh. B.
5. Commissioner Bowser was unaware that Bannum, Inc. paid for the ticket because James Crawford, the Community Organizer for D.C. Prisoners' Legal Services Project, Inc. of Washington, D.C. was primarily encouraging him to visit the Orlando, Florida site. See also OCF Order at Exhs. B & D.
6. At the November 20, 2002 meeting of ANC 5A, in response to a query from a fellow commissioner, Martha Pappano, Commissioner Bowser reported on his June 2002 trip to Orlando, Florida to visit and inspect the Bannum, Inc. community center. See Exh. C at p. 2.
7. Commissioner Bowser reported at the November 20, 2002 meeting of ANC 5A that he was asked to visit the Bannum, Inc. Orlando, Florida community center by Chairperson Norma M. Broadnax and "what he saw was not workable in D.C." Id.
8. At the January 9, 2003 meeting of ANC 5A, Commissioner W. Ronald Evans "discussed the proposed legislation regarding group homes and how it related to the ANC 5A Resolution." See Exh. D at p. 3.
9. At the January 22, 2003 meeting of ANC 5A, Commissioner W. Ronald Evans is listed as "anticipating the halfway house hearing." See Exh. E at p. 2.
10. At the February 6, 2003 meeting of ANC 5A, "[i]t was motioned by Commissioner Currie and seconded by Commissioner Evans that ANC 5A support ANC 5B's opposition to the Group Home on Adams Place. The motion passed." See Exh. F at p. 1.
11. At the March 6, 2003 meeting of ANC 5A, it was listed that "Mr. Daryl Carter, Concerned Citizens Against Half[way] Houses would be added to the agenda. It was motioned by Commissioner Evans and seconded by Commissioner Currie to add Daryl Carter to the March 6 Committee of the Whole meeting agenda if he came to the meeting." See Exh. G at p. 1.
12. At the March 26, 2003 meeting of ANC 5A, it was listed that "Mr. Darryl Carter, Concerned Citizens for a Safe Ward 5, gave an overview on his activities

regarding the proposed halfway house on Adams Place, NE. There is a court date for April 3 for a temporary stop work order.” See Exh. H at p. 1.

13. At the April 3, 2003 meeting of ANC 5A, it was listed that Commissioner Ruth Y. Goodwin “had also been in court all day regarding the proposed halfway house in Ward 5. She requested a copy of the report from Commissioner Bowser regarding his visit to the correctional facility in Florida.” See Exh. I at p. 2.
14. Based upon the “Roll Call” at the meetings of November 20, 2002, January 9, 2003, January 22, 2003, March 6, 2003, March 26 2003, and April 3, 2003, Commissioner Bowser was in attendance at each meeting.
15. At the meetings of November 20, 2002, January 9, 2003, January 22, 2003, March 6, 2003, March 26, 2003, and April 3, 2003, the presence of the Bannum, Inc. “halfway house” in Ward 5 was ANC 5A business.
16. On February 6, 2003, ANC 5A took official action, at a public meeting, when it voted to support ANC 5B’s opposition to the Group Home on Adams Place; and, Commissioner Bowser voted. See Exh. F at p. 1.
17. Notwithstanding that Commissioner Bowser disclosed to ANC 5A his June 2002 Bannum, Inc. site visit to Orlando, Florida on the November 20, 2002 record, and his opinion thereon, the record of the February 6, 2003 ANC 5A public meeting does not reflect that Commissioner Bowser advised the ANC, prior to ANC 5A taking official action with regard to the Group Home on Adams Place, of his June 2002 Orlando, Florida trip to visit and inspect a Bannum center; and, that he did not pay, nor knew who paid, for the ticket thereto. Id.

Conclusions of Law

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. As a public official of the District of Columbia, respondent is subject to the Act’s conflict of interest statute at D.C. Official Code §1-1106.01.
2. As an Advisory Neighborhood Commissioner in the District of Columbia at public meetings of his Advisory Neighborhood Commission, Commissioner Bowser is required to take action on proposed District policy regarding, inter alia, social services programs; and, that the resulting recommendation from the ANC must be strongly considered by the concerned District agency, in accordance with D.C. Official Code §1-309.10.
3. Commissioner Bowser received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when he accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site; and, it can be reasonably inferred that this thing of value would influence him in the discharge of his duties.

4. On February 6, 2003, Commissioner Bowser was in a conflict situation created by a personal interest, and violated the Act, pursuant to D.C. Official Code §1-1106.01(g) when he voted on a matter involving Bannum, because he accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site to become aware of its operations so as to return to the ANC to favorably apprise the members of its operation; and, he failed to inform the ANC on that public record of his June 2002 action, notwithstanding his report thereon on November 20, 2002.
5. In accordance with 3 D.C.M.R. §3711.2, respondent may be fined a maximum of \$4,000.00 for failing to disclose on the record at the February 2003 public ANC meeting his conflict of interest created by his personal interest with Bannum, pursuant to D.C. Official Code §1-1106.01(g), and because he received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when he accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site.
6. For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director may modify, rescind, dismiss or suspend any fine.
7. Notwithstanding, Commissioner Bowser’s service as an ANC for almost 20 years, his disclosure on the ANC record with regard to the Orlando, Florida visit, his admissions on the OCF record and his willingness to return to Bannum, Inc. the cost of the ticket, constitute good cause for partial suspension of the fine. See In Re: Rhonda Chappelle v. Office of Campaign Finance, Administrative Hearing No. 04-002 (February 19, 2004) (“In light of the fact that Chappelle did produce some evidence, however fragile, that she disclosed the fact of her Bannum-sponsored trip to the ANC during the meetings at issue, the Board suspended the portion of the fine associated with the failure to disclose.” p. 6.)

Recommendation

I hereby recommend that the Director of the Office of Campaign Finance (Director) order Commissioner Joseph Bowser to return to Bannum, Inc. the cost of the roundtrip coach fare plane ticket to Orlando, Florida; and, to impose upon Commissioner Bowser a fine of \$500 because he received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when he accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site.

I further recommend that the Director impose upon Commissioner Bowser a fine of \$2,000 for failing to disclose on the record at the February 2003 public ANC meeting his conflict of interest created by his personal interest with Bannum, pursuant to D.C. Official Code §1-1106.01(g), because he accepted the ticket; however, in light of the mitigating circumstances and the ruling of the Board of Elections and Ethics in Chappelle v. the Office of Campaign Finance, I request that the Director suspend any portion of the

fine associated with Commissioner Bowser's failure to disclose, pursuant to D.C. Official Code §1-1106.01(g).

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that Commissioner Joseph Bowser return to Bannum, Inc. the cost of the roundtrip coach fare plane ticket to Orlando, Florida;

IT IS ALSO ORDERED that Commissioner Bowser pay a fine of \$500 because he received "a thing of value," pursuant to D.C. Official Code §1-1106.01(c), when he accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site; and,

IT IS FURTHER ORDERED that Commissioner Bowser pay a fine of \$2,000 for failing to disclose on the record at the February 2003 public ANC meeting his conflict of interest created by his personal interest with Bannum, pursuant to D.C. Official Code §1-1106.01(g), because he accepted the ticket; however, in light of the stated mitigating circumstances and the ruling of the Board of Elections and Ethics in Chappelle v. the Office of Campaign Finance, this portion of the fine is suspended.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

Anwar Wilson
Clerk

cc: The Board of Elections and Ethics
c/o Kenneth McGhie, Esq.
General Counsel

Commissioner Joseph Bowser
4809 7th Street, N.E.
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Mayor, District of Columbia

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Ward 5 Member, City Council

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NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C., 20009.